

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James R. Wells,

Plaintiff,

v.

Case No. 17-cv-807 (JNE/SER)
ORDER

BNSF Railway Company,

Defendant.

Asserting violations of the Americans with Disabilities Act and the Minnesota Human Rights Act, James R. Wells brought this action against Burlington Northern-Santa Fe Railway Co. and Comprehensive Health Services, Inc. Maintaining that it was incorrectly named as Burlington Northern-Santa Fe Railway Co., BNSF Railway Company moved to dismiss the Complaint. The next day, Wells voluntarily dismissed one of the Complaint's three counts. Later, he filed a First Amended Complaint, which names BNSF Railway as the sole defendant.¹ BNSF Railway again moved to dismiss.

In his opposition to the Motion to Dismiss the First Amended Complaint, Wells requested leave to amend his pleading "if the Court finds his First Amended Complaint to be deficient." In its reply memorandum, BNSF Railway addressed Wells's request:

Wells has already amended his pleading once after BNSF's motion to dismiss his original Complaint, but he failed to address the issues BNSF

¹ The Court denies as moot BNSF Railway's Motion to Dismiss the Complaint. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005) ("It is well-established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect."); *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002) ("If anything, Pure Country's motion to amend the complaint rendered moot Sigma Chi's motion to dismiss the original complaint.").

raised about the claims that now remain. Because he has *still* failed to plead facts sufficient to state those claims, BNSF can only assume he is unable to do so and that any further amendment would be futile. Nevertheless, BNSF does not oppose Wells's request if the Court is inclined to grant him leave to further amend his Complaint.

Without expressing any opinion on the merits of BNSF Railway's Motion to Dismiss the First Amended Complaint, the Court grants Wells an opportunity to attempt to amend his pleading. If Wells intends to amend his First Amended Complaint, he shall, within 14 days of the date of this Order, serve and file either (1) a Second Amended Complaint, if BNSF Railway consents in writing to the amendment, or (2) a motion to amend. *See* Fed. R. Civ. P. 15(a)(2); D. Minn. LR 15.1. The Court defers consideration of BNSF Railway's Motion to Dismiss the First Amended Complaint. The hearing on July 25, 2017, at 11 a.m. is cancelled.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. BNSF Railway's Motion to Dismiss the Complaint [Docket No. 9] is DENIED as moot.
2. If Wells intends to amend his First Amended Complaint, he shall, within 14 days of the date of this Order, serve and file either (1) a Second Amended Complaint, if BNSF Railway consents in writing to the amendment, or (2) a motion to amend.
3. The hearing on July 25, 2017, at 11 a.m. is CANCELLED.

Dated: July 7, 2017

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge